

The initial issue that will be addressed by the Appeals Board is whether it has the jurisdiction to review this Preliminary Hearing Order. The Administrative Law Judge ordered the respondent to pay temporary total disability benefits to the claimant from October 3, 1995, if claimant is taken off work. She also ordered the respondent to provide claimant with a list of three physicians within three days or claimant may select her own treating physician. Claimant contends that temporary total disability benefits should have been ordered from September 14, 1995 instead of from October 3, 1995. Claimant further

argues that the three physicians submitted by the respondent in response to the Administrative Law Judge's Order were not acceptable to the claimant and, therefore, the Administrative Law Judge should have allowed the claimant to select her own physician. In the alternative, claimant argues that the Administrative Law Judge should have appointed a treating physician.

The respondent filed a Motion to Dismiss this appeal before the Appeals Board arguing that a preliminary hearing record was not made of the hearing that took place before the Administrative Law Judge on October 26, 1995 which resulted in her Preliminary Hearing Order dated October 26, 1995. The respondent contends that it is the appellant's responsibility to make a record before the Administrative Law Judge. Respondent asserts that in the absence of such a record the Appeals Board cannot conduct an independent review of the evidence. Respondent further argues that since the claimant did not make a record of these proceedings, her Application for Review should be dismissed, as it is impossible for Appeals Board to review an order without an evidentiary record.

A preliminary hearing was previously held in this matter on October 3, 1995, before Administrative Law Judge John D. Clark. A transcript of those proceedings is included in the record of this case. At that time, claimant requested a preliminary hearing because she was dissatisfied with the names of the three physicians that were submitted by the respondent as a result of an earlier change of physician order that was entered by Administrative Law Judge Shannon S. Krysl dated September 20, 1995. During the October 3, 1995 preliminary hearing, claimant also requested temporary total disability benefits to be paid from September 14, 1995, the date respondent terminated the temporary total disability benefits being paid to the claimant voluntarily. As a result of that hearing, Judge Clark issued an Order dated October 3, 1995 which required respondent to again submit to the claimant three health care provider names from which claimant was to select a treating physician. Judge Clark did not address the temporary total disability benefit request. Since the request was not addressed, claimant asked Administrative Law Judge Shannon S. Krysl to reconsider the Preliminary Hearing Order. The Preliminary Hearing Order that is the subject of this appeal is a result of claimant's request for reconsideration. The Appeals Board finds that the transcript of the preliminary hearing proceedings held on October 3, 1995 before Administrative Law Judge John D. Clark and the exhibits admitted therein, constitute the preliminary hearing record for Appeals Board review of this appeal.

However, for the reasons set forth below, the Appeals Board finds that the two issues raised by the claimant are not jurisdictional issues that are subject to Appeals Board review. The Administrative Law Judge has the authority to decide issues relating to granting or denying requests for temporary total disability compensation and medical compensation in a preliminary hearing order pending a full hearing on the claim. See K.S.A. 44-534a(a)(2). If the Administrative Law Judge finds, as in this case, that the services of a health care provider furnished to treat the claimant by the respondent were not satisfactory, the Administrative Law Judge is authorized to order the employer to submit the names of three health care providers that are not associated in practice together to the employee. The employee is to select from the list the physician to be the authorized treating health care provider. See K.S.A. 44-510(c)(1). Accordingly, the Administrative Law Judge did not exceed her jurisdiction when she ordered respondent to pay temporary total disability benefits from October 3, 1995 and to provide the claimant with names of three health care providers.

The Appeals Board also has jurisdiction to review a preliminary hearing order if one of the specific issues that are enumerated in K.S.A. 44-534a(a)(2) are disputed. In the instant case, claimant has not raised one of those issues and, therefore, the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the Order of Administrative Law Judge Shannon S. Krysl, dated October 26, 1995 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, Kansas
 Eric K. Kuhn, Wichita, Kansas
 Michael T. Harris, Wichita, Kansas
 Shannon S. Krysl, Administrative Law Judge
 Philip S. Harness, Director